

CNR NO-MHWS100010902019

R.C.S. No.62 OF 2019

COMMON ORDER BELOW EXHIBITE – 24 & 25

(Bhagwan Shankar Shinde Vs. Savitrabai Pandurang Shinde, etc- 6)

1. By filing present applications (Exh.24 & 25) the plaintiff is seeking condonation of delay as well as permission to bring legal heirs of the deceased defendant No.6 (hereinafter referred to as “LRs of the deceased defendant No.6”) on record of the suit.

2. The defendants by filing say overleaf of the applications have taken strong objection.

3. I have perused the applications and affidavit in support of the applications. I have also perused say of defendant Nos.1 & 2 given overleaf of the applications.

4. I have heard, Mr.S.D.Pophale, learned advocate for the plaintiff and Mr.S.S.Magar, learned advocate for defendant Nos.1 & 2.

5. It is contended in the applications that the plaintiff has filed present suit for against the defendants for partition and possession. Defendant No.6 is died on 04/05/2021 leaving behind her LR's i.e. proposed defendant Nos.6 (a) to 6 (e). It is further contended that due to out-break of Corona Virus, the plaintiff could not make application for bringing LR's of deceased defendant No.6 on record within statutory period. Therefore, 40 days delay have been caused. Hence, the plaintiff by filing present applications prayed for condonation of delay and permission to bring LR's of the deceased defendant No.6 on record the suit.

6. On the other hand, defendant Nos.1 & 2 contended and Mr.Magar, learned advocate for defendant Nos.1 & 2 submitted that the plaintiff was having ample knowledge about death of defendant No.6. Reason mentioned from causing delay is not good one in the eyes of law and same can not be considered. The plaintiff is gross negligent and there is delay and latches on his part. Present applications are not tenable in the eyes law. Hence, he prayed for rejection of application with heavy cost.

7. In view of above factual matrix, I have perused the judgment of the Hon'ble Supreme Court in the case of, **Mithailal Dalsangar Singh and others V/s. Annabai Devram Kini and others, reported in 2003(4) Mh.L.J.(SC) 721.**

In para No.8, the Hon'ble Supreme Court has observed as follows :

“8. In as much as the abatement results in denial of hearing on the merits of the case, the provision of abatement has to be construed strictly. On the other hand, the prayer for setting aside an abatement and the dismissal consequent upon an abatement, have to be considered liberally. A simple prayer for bringing the legal representatives on record without specifically praying for setting aside of an abatement may in substance be construed as a prayer for setting aside abatement. So also a prayer for setting aside abatement as regard one of the plaintiff can be

construed as a prayer for setting aside the abatement of the suit in its entirety. Abatement of suit for failure to move an application for bringing the legal representatives on record within the prescribed period of limitation is automatic and a specific order dismissing the suit as abated is not called for. Once the suit has abated as a matter of law, though there may not have been passed on record a specific order dismissing the suit as abated, yet the legal representatives proposing to be brought on record or any other applicant proposing to bring the legal representatives of the deceased party on record would seek the setting aside of an abatement. A prayer for bringing the legal representatives on record, if allowed, would have the effect of setting aside the abatement as the relief of setting aside abatement though not asked for in so many words is in effect being actually asked for and is necessarily implied. Too technical or pedantic an approach in such cases is not called for.”

8. In view of above ratio laid down by the Hon'ble Supreme Court, the matter in hand should be decided as far as possible on merits and should not be dismissed on technicalities. The plaintiff has filed present applications for condonation of delay and bringing LRs' of the deceased defendant No.6 on record. Present applications are supported by affidavit. The defendants have not denied the fact that the deceased defendant No.6 is survived by legal heirs. It is admitted fact that there was spread of Corona Virus in the relevant period and due to which whole the World literally locked down into the home. The plaintiff is more than 70 years old. Therefore, no deliberate delay is found on the part of plaintiff. The present suit is for partition and possession in respect of immovable property and the deceased defendant No.6 is survived by the LRs'. Therefore, right to sue survived. Hence, I proceed to pass the following order:

:- O R D E R :-

1. Applications (Exh.24 & 25) are hereby allowed.
2. Delay is hereby condoned and deemed abatement of the suit against the deceased defendant No.6 is hereby set aside.
3. Permission is granted to the plaintiff to bring LRs' of deceased defendant No.6 on record of the suit within stipulated period from the date of this order.
4. The plaintiff is hereby directed to file amended copy of the plaint which shall be supported by affidavit on record within stipulated period from the date of this order.
5. No order as to cost.

Date : 10/02/2023.

(G.S.Badgujar)
Civil Judge Jr.Dv., Malegaon.

CERTIFICATE

I affirm that the contents of this P.D.F file Judgment/Order are same word to word, as per the original Judgment/Order.

Name of Stenographer	Shri. C. R. Lande (Grade III)
Name of Court	C.J.J.D. & J.M.F.C., Malegaon, Distt. Washim.
Date of Dictation	10/02/2023
Judgment/Order signed by the PO on	10/02/2023
Judgment /order uploaded on	13/02/2023